

**ENTERED**

July 28, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**CHARLES OTIS HERRING, *et al.*,

Plaintiffs.

V.

RENEWABLE ENERGY SYSTEMS  
AMERICAS, INC., *et al.*,

Defendants.

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CIVIL ACTION NO. 4:21-cv-00260

**ORDER ADOPTING MAGISTRATE JUDGE'S  
MEMORANDUM AND RECOMMENDATION**

On September 17, 2021, all dispositive and non-dispositive pretrial matters were referred to United States Magistrate Judge Andrew M. Edison. *See* Dkt. 28. Judge Edison filed a Memorandum and Recommendation on July 11, 2023, recommending that the motions for summary judgment filed by PeopleReady, Inc. (“PeopleReady”) and Renewable Energy Systems Americas, Inc. (“RES”) (Dkts. 56, 58) be **GRANTED in part and DENIED in part**. *See* Dkt. 90. In conjunction with this recommendation, Judge Edison decided several procedural and evidentiary motions by order. Specifically, he granted a motion to strike filed by Plaintiff Charles Herring (“Herring”) (Dkt. 60); granted RES’s motion to strike the declaration of Jaylon Tolbert (Dkt. 64); denied Herring’s request to supplant Tolbert’s declaration (Dkt. 67); granted Herring’s request to amend his response to PeopleReady’s motion for summary judgment (Dkt. 70) and denied Defendants’ motions to strike Herring’s sur-replies (Dkts. 72–73).

On July 25, 2023, PeopleReady and RES filed their objections to the Memorandum and Recommendation. Dkts. 92–93. PeopleReady and RES do not object to any of Judge Edison’s procedural and evidentiary orders; they object only to Judge Edison’s recommendation that a genuine issue of material fact precludes summary judgment on Herring’s hostile work environment claim under 42 U.S.C. § 1981.<sup>1</sup> Herring did not file any objections.

In accordance with 28 U.S.C. § 636(b)(1)(C), this Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* FED. R. CIV. P. 72(b)(3).

The Court has carefully considered the Objections; the Memorandum and Recommendation; the pleadings; and the record. The Court **ACCEPTS** Judge Edison’s Memorandum and Recommendation and **ADOPTS** it as the opinion of the Court. It is therefore **ORDERED** that:

- (1) Judge Edison’s Memorandum and Recommendation (Dkt. 90) is **APPROVED and ADOPTED** in its entirety as the holding of the Court; and
- (2) The motions for summary judgment filed by PeopleReady and RES (Dkts. 56, 58) are **GRANTED in part and DENIED in part**. Specifically,

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<sup>1</sup> PeopleReady also “objects to certain potential findings of fact,” but only “[i]n the event these statements are regarded as findings of fact.” Dkt. 92 at 2. Judge Edison did not issue any findings of fact and did not state that these facts are undisputed. Accordingly, they are not regarded as findings of fact and PeopleReady’s objection is moot.

Herring's negligence and gross negligence claims are dismissed, and Herring's § 1981 hostile work environment claim survives.

It is so **ORDERED**.

SIGNED and ENTERED this 28th day of July 2023.

A handwritten signature in black ink, reading "George C. Hanks, Jr.", written over a horizontal line.

GEORGE C. HANKS, JR.  
UNITED STATES DISTRICT JUDGE